



4910-06-P

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 236

[Docket No. FRA-2001-10160, Notice No. 5]

Need for Agency Approval of a Railroad's Use of Certain Technology that Has Been Previously Approved for Use by a Different Railroad

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Interim statement of agency interpretation, with request for public comment.

SUMMARY: FRA is providing interim guidance on a railroad's use of processor-based signal or train control technology subject to the requirements of 49 CFR part 236, subpart H, in the situation where the railroad has not previously obtained FRA's approval to use the technology, but a different railroad has already received FRA's approval to do so. Under these regulations, any railroad seeking to use signal or train control technology subject to the regulations must first adopt both a Railroad Safety Program Plan and a Product Safety Plan covering the technology that have been approved by FRA. If FRA has already approved the use of a certain processor-based signal or train control technology by one railroad pursuant to that railroad's plans, a different railroad (a third-party railroad) may use as a model the Railroad Safety Program Plan and Product Safety Plan of the railroad that has FRA's approval for use of the technology, and the third-party railroad must submit its own plans and obtain FRA's approval before using the

technology. FRA anticipates that there will be some railroad-by-railroad variances that will not be safety-critical, and such variances are required to be specified and are also subject to FRA approval.

DATES: This document is effective on [INSERT DATE OF PUBLICATION]. Public comments on the interim interpretation are due by [INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER.]. Late-filed comments will be considered to the extent practicable.

ADDRESSES: You may submit comments on the interim interpretation set forth in this document, identified as Docket No. FRA-2001-10160, Notice No. 5,¹ by any of the following methods:

- **Web site:** The Federal eRulemaking Portal, <http://www.regulations.gov>. Follow the Web site's online instructions for submitting comments.
- **Fax:** 202-493-2251.
- **Mail:** Docket Management Facility, U.S. Department of Transportation, 1200 New Jersey Avenue, SE., W12-140, Washington, DC 20590.
- **Hand Delivery:** Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

¹ Prior to publication of the interim interpretation, FRA published a total of four documents in the Federal Register under Docket No. FRA-2001-10160.

Instructions: All submissions must include the agency name and docket number for this interim statement of agency policy and interpretation. Note that all submissions received will be posted without change to <http://www.regulations.gov> including any personal information.

Docket: For access to the docket to read background documents or comments received, go to <http://www.regulations.gov> or to Room W12-140 on the ground level of the West Building, 1200 New Jersey Avenue, SE., Washington, DC between 9 a.m. and 5 p.m. Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Mark Hartong, PE., Senior Scientific/Technical Advisor, Office of Safety Assurance and Compliance, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-1332), email (mark.hartong@dot.gov); Mr. Jason Schlosberg, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-6032), email (jason.schlosberg@dot.gov); or Mr. Matthew Prince, Office of Chief Counsel, FRA, 1200 New Jersey Avenue, SE., Washington, DC 20590 (telephone: (202) 493-6146), email (matthew.prince@dot.gov).

SUPPLEMENTARY INFORMATION: FRA's regulations at Subpart H of 49 CFR part 236 (Subpart H), most of which FRA issued in 2005, set forth minimum performance standards for the development and use of certain technologies, namely safety-critical processor-based signal or train control systems, including subsystems and components thereof, developed under the terms and conditions of that subpart. See 70 FR 11095 (Mar. 7, 2005); 49 CFR 236.0(h), 236.901. The term "processor-based" means

dependent on a digital processor in order to function properly. See 49 CFR 236.903. The subpart does not apply to a processor-based signal or train control system (including a subsystem or component thereof) that was in service as of June 6, 2005. See 49 CFR 236.911(a). For brevity, the subpart defines the term “product” to mean “a processor-based signal or train control system, subsystem, or component.” See 49 CFR 236.903.

Under Subpart H, a railroad that wishes to develop and use a safety-critical product or products covered by Subpart H must develop a Railroad Safety Program Plan (RSPP). The RSPP is intended to serve as the railroad’s principal safety document for all of the railroad’s safety-critical products subject to Subpart H. The railroad’s RSPP must outline its methods of evaluation, risk assessment, safety assessment, system verification and validation, human factors analysis, and configuration management practices for all of its products subject to Subpart H. Using the methods described in its RSPP, the railroad then must develop a Product Safety Plan (PSP), for each product, which is intended to describe in detail all of the safety aspects of each particular product. Then the railroad must submit its RSPP and PSP(s) to FRA for approval. See 49 CFR 236.905(c) and 236.913.

FRA recognizes that Subpart H does not explicitly discuss how a third party may use the same processor-based signal or train control technology after FRA has approved it for use on the basis of a different railroad’s PSP. However, FRA did discuss the potential for “portable” PSPs to be used by multiple railroads. See 70 FR 11080. This Interim Statement of Agency Interpretation describes the process by which a railroad may most readily receive FRA’s approval for the railroad’s implementation and use of a

technology subject to Subpart H, where the technology has previously been approved for use by another railroad. This Interim Statement of Agency Interpretation does not amend Subpart H, but rather provides public notice of the standards that FRA will use to evaluate a PSP submitted under Subpart H by a third-party railroad. As indicated above, this interpretation becomes effective upon publication. RSPPs and PSPs that were acceptable prior to the effective date of this document will not be rendered unacceptable by this document; therefore, prior notice of the interpretation is not necessary.

Any third-party railroad seeking to implement a product subject to Subpart H must first develop and adopt its own RSPP in accordance with 49 CFR 236.905. This holds true even where a railroad will only be using technologies subject to an FRA-approved PSP developed by a different railroad. The third-party railroad must then submit an informational filing or petition for approval of a PSP in accordance with 49 CFR 236.913. An RSPP and PSP are necessary in order for a railroad to establish the performance requirements to which it will be held by FRA, and an RSPP and PSP are, therefore, required even for the use of previously-approved technologies. If a railroad submits an RSPP that includes only minor, non-safety-critical changes from an RSPP previously-approved by FRA and if the railroad indicates both the source of the RSPP and the variances from the FRA-approved version, FRA anticipates few difficulties in the RSPP-approval process. If a railroad does not plan to develop a PSP independently, the most important element of the RSPP is the “configuration management control plan” required by 49 CFR 236.905(b)(4).

Similarly, if a third-party railroad submits a PSP for a product based upon a PSP for the same product that was previously approved by FRA and if the third-party railroad identifies all variances in the product and its use from the approved version, FRA expects that the review process will focus only on those areas where variances exist in the product design or intended use. Where a PSP makes reference to a previously-approved PSP, it is not necessary for a railroad to resubmit design information to demonstrate that the development of the technology complies with Subpart H, except where development changes were made from the approved version of the technology. Accordingly, in such cases the elements of the PSP defined in 49 CFR 236.907(a)(1)-(a)(11) are satisfied if the applicant makes explicit reference to an FRA-approved PSP;² the content of the original PSP relating to those paragraphs need not be repeated in the third-party PSP filings. However, because paragraphs (a)(12)-(a)(20) of 49 CFR 236.907 address a railroad's use of the technology, including training, installation, maintenance, security, and other elements, information called for by these paragraphs must be included within the third-party's PSP expressly. A railroad may choose to copy these elements from an approved PSP, and FRA encourages this practice, but it is necessary for railroads to explicitly adopt the practices required for the use of the technology. This reiteration of the description of these required practices will ensure that a railroad has adequate notice of its obligations

² Note that FRA approvals of PSPs are published on regulations.gov. Generally, railroads would know of the approved PSP for a product from the supplier of the product.

under its PSP, which are subject to enforcement under Subpart H. If variances exist in the third-party railroad's PSP information responsive to paragraphs (a)(12)-(a)(20) of 49 CFR 236.907, then those variances must be supported by the safety analysis of the original railroad or the third-party railroad contained within the RSPP and material in the PSP responsive to paragraphs (a)(1)-(a)(11) of 49 CFR 236.907.

Once FRA approves a railroad's PSP (submitted through either an informational filing or a petition for approval), the submitting railroad becomes subject to Subpart H in its entirety, including the requirement set forth in 49 CFR 236.915 that the railroad comply with the terms of its FRA-approved PSP.

AUTHORITY: 49 U.S.C. 20102-20103, 20107, 20133, 20141, 20157, 20301-20303, 20306, 20701-20703, 21301-21302, 21304; 28 U.S.C. 2461, note; and 49 CFR 1.89.

Issued in Washington, DC, on November 21, 2013.

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